

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services**

In the matter of

**XXXXX
Petitioner
v**

File No. 87717-001

**Physicians Health Plan of Mid-Michigan
Respondent**

**Issued and entered
this 24th day of March 2008
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On February 8, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL550.1901 *et seq.* On February 15, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

The issue in this matter can be determined by analyzing the contract defining the Petitioner's health care coverage. The Commissioner reviews contractual issues under MCL 500.1911(7). No medical issues are presented requiring analysis by an independent medical review organization.

**II
FACTUAL BACKGROUND**

The Petitioner is a member of Physicians Health Plan of Mid-Michigan (PHP). She requested coverage for the prescription drug Chantix as an aid for smoking cessation. PHP denied coverage because it requires its members to first enroll in the Healthyroads smoking

cessation program.

The Petitioner appealed the denial through PHP's internal grievance process and PHP issued a final adverse determination dated December 14, 2007.

III ISSUE

Did PHP correctly deny coverage for the prescription drug Chantix?

IV ANALYSIS

Petitioner's Argument

The Petitioner says she says she has tried every method available to quit smoking including "cold turkey." She says she requested Chantix because she has been recently diagnosed with a vascular disease. Because of this disease, her vascular specialist advised her that she could no longer use the over-the-counter medications she has used to quit smoking (e.g., nicotine patch, nicotine gum, and Zyban) because those medications can cause vascular constriction. The Petitioner says she is currently participating in a smoking cessation program offered by the American Cancer Society (ACS) and she does not believe she should have to enroll in another program that she says is not as effective or as responsive. She avers:

- It took her at least eight phone calls over a two-week period to receive partial information about the Healthyroads program;
- Healthyroads offered no upfront information about its program;
- The ACS program information is readily available on the internet and through a toll-free phone number; and
- ACS mails information within four days at no charge

Additionally, the Petitioner says the ACS program is more cost-effective for her and PHP because there is no cost. She says she enrolled in PHP's program but when she asked questions about the qualifications of the program's coaches, Healthyroads could not tell her and she decided to request a refund.

The Petitioner believes she meets PHP's criteria for Chantix. She has failed Zyban and has been advised not to go cold turkey or use the nicotine patch and gum. She believes the ACS program should satisfy PHP's requirement of a smoking cessation program and PHP should waive its requirements in her case.

PHP's Argument

In its December 14, 2007, final adverse determination, PHP said that it denied the request for Chantix because "Healthyroads is the only approved network program specifically credentialed by Physicians Health Plan of Mid-Michigan (PHPMM)." In support of its decision, PHP cites its tobacco cessation program rider to the Petitioner's certificate of coverage.

PHP argues that the Petitioner does not qualify to have Chantix covered because she has not enrolled and participated in its Healthyroads program for smoking cessation and its denial is appropriate under the terms of its certificate.

Commissioner's Review

The Commissioner carefully reviewed the arguments and documents the parties submitted. The issue in this case is whether PHP properly denied coverage for the prescription drug Chantix under the terms of its certificate. PHP refers to its tobacco cessation program rider, which states in part:

Tobacco Cessation Program

* * *

Benefits are provided for a designated Network tobacco cessation program. Benefits include:

* * *

- A program provided by specifically credentialed providers.

* * *

What's Not Covered—Exclusions:

* * *

- Nicotine replacement therapy products, and Prescription Drug Products to aid in smoking cessation, including Zyban/Wellbutrin, unless you enroll and participate in the group classes. [Underlining added]

A health maintenance organization (HMO) like PHP is required under Section 3519(3) of

the Insurance Code of 1956, MCL 500.3519(3), to provide “basic health services.” Smoking cessation is not a basic health service as that term is defined in Section 3501(b) of the Code, MCL 500.3501(b), and HMOs are not required to cover it. HMOs are free to determine whether they will cover smoking cessation programs – they may limit the benefit or even totally exclude it from coverage.

The Petitioner’s benefit plan includes some coverage for smoking cessation, including prescription drugs, but PHP first requires its member to enroll and participate in a specific credentialed program. The Petitioner believes that the ACS program she is participating in should satisfy PHP’s requirement. However, at this time Healthyroads is PHP’s only designated and credentialed smoking cessation program and smoking cessation benefits are conditioned upon attendance in the Healthyroads smoking cessation program. Since the Petitioner has not participated in this program, her Chantix prescription would be excluded from coverage.

Based on the record, the Commissioner concludes that the Petitioner did not meet the requirements for Chantix and finds that PHP’s final adverse determination is correct.

V ORDER

PHP’s December 14, 2007, final adverse determination is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.